

21-15696

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DANIEL E. GONZALEZ,

Appellant,

v.

**DEPARTMENT (BUREAU) OF REAL ESTATE,
A California State Agency; KYLE THOMAS
JONES; TRICIA SOMMERS; TRUDY ANN
SUGHRUE; JEFF DAVI; WILLIAM E. MORAN;
WAYNE S. BELL; JOHN VAN DRIEL,**

Respondents.

Appeal from the United States District Court
for the Eastern District of California

No. 2:15-cv-2448 TLN KJN PS
Troy L. Nunley, Judge

**RESPONDENTS' MOTION TO DISMISS
APPEAL PURSUANT TO FRAP 42-1**

ROB BONTA

Attorney General of California

DANIELLE F. O'BANNON

Senior Assistant Attorney General

CATHERINE WOODBRIDGE

Supervising Deputy Attorney General

JOHN C. BRIDGES

Deputy Attorney General

State Bar No. 248553

1300 I Street, Suite 125

P.O. Box 944255

Sacramento, CA 94244-2550

Telephone: (916) 210-7529

Fax: (916) 322-8288

Email: John.Bridges@doj.ca.gov

*Attorneys for Respondents Jones, Sommers,
Sughrue, Davi, Bell, Moran and VanDriel*

Respondents Jones, Sommers, Sughrue, Davi, Bell, Moran and VanDriel, hereby move to dismiss this appeal, Case Number 21-15696, due to Appellant Daniel E. Gonzalez's failure to prosecute.

PROCEDURAL BACKGROUND

Appellant Gonzalez filed two appeals related to the Respondents in this action. The first is the instant appeal (21-15696). The second, Case Number 22-15523, was dismissed by the clerk of this court on July 21, 2022, for failure to prosecute pursuant to Ninth Circuit Rule 42-1.

On July 13, 2022, this court issued an order granting Appellant Gonzalez's motion for an extension of time to file his opening brief. That order states that the opening brief is due August 12, 2022. (Docket Entry No. 27.)

On August 1, 2022, Gonzalez filed a motion to vacate the briefing schedule. (Docket Entry No. 28.) The court did not rule on that motion.

On August 12, Gonzalez filed a motion to reinstate the dismissed appeal (Docket Entry No. 4 related to Case No. 21-15523), as well as a motion to consolidate both appeals (Docket Entry No. 29 in the instant appeal). The court did not rule on these motions.

To date, Gonzalez has not filed an opening brief. The court has granted five requests for extension of time to file his opening brief (Docket Entry Nos. 10, 12,

17, 20, and 27.) Nearly six months has passed since the August 12, 2022 deadline for the filing of the opening brief, and Gonzalez has still not filed it.

ARGUMENT

This appeal should be dismissed for failure to prosecute. Ninth Circuit Rule 42-1 provides that, “[w]hen an appellant fails to file a timely record, pay the docket fee, file a timely brief, or otherwise comply with rules requiring processing the appeal for hearing, an order may be entered by the clerk dismissing the appeal.” (FRAP Rule 42-1.) Gonzalez has had ample time to file his opening brief and has failed to do so. Instead, he filed a motion to reinstate a related appeal that was already dismissed for his failure to file an opening brief, rather than filing the opening brief in this matter.

CONCLUSION

Gonzalez has failed to comply with this court’s order to file an opening brief by August 12, 2022. He has failed to prosecute his appeal. Accordingly, Respondents respectfully request that this motion be granted and the appeal dismissed.

Dated: January 6, 2023

Respectfully Submitted,

ROB BONTA

Attorney General of California

DANIELLE F. O'BANNON

Senior Assistant Attorney General

CATHERINE WOODBRIDGE

Supervising Deputy Attorney General

/s/ JOHN C. BRIDGES

JOHN C. BRIDGES

Deputy Attorney General

*Attorneys for Respondents Jones, Sommers,
Sughrue, Davi, Bell, Moran and VanDriel*

SA2021301900
36830019.docx

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 15. Certificate of Service for Electronic Filing

9th Cir. Case Number(s) 21-15696

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Service on Case Participants Who Are Registered for Electronic Filing:

☐ I certify that I served the foregoing/attached document(s) via email to all registered case participants on this date because it is a sealed filing or is submitted as an original proceeding and therefore cannot be served via the Appellate Electronic Filing system.

Service on Case Participants Who Are NOT Registered for Electronic Filing:

☒ I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants (*list each name and mailing/email address*):

Daniel Gonzalez
657 Concord Place
Pleasanton, CA 94566-7915
In Pro Per

Description of document(s) (*required for all documents*):

RESPONDENTS' MOTION TO DISMISS APPEAL PURSUANT TO FRAP 42-1

/s/ T. Torres-Herrera
Terri Torres-Herrera

1-6-23
January 6, 2023